

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN N. KANGETHE,

Plaintiff,

v.

FEDEX CORP.,

Defendant.

Case No. C12-364-MJP

**REPORT AND
RECOMMENDATION**

Plaintiff's motion for leave to appeal in forma pauperis has been referred to the undersigned United States Magistrate Judge. The Court recommends the motion (Dkt. 29) be **DENIED**.

On April 22, 2013, plaintiff filed a notice of appeal seeking review of the Court's order granting summary judgment in favor of defendant and dismissing the case. Dkt. 29. In that order, the Court dismissed plaintiff's remaining claim—that defendant breached an implied contract—finding defendant's Employee Handbook did not imply a contract, that plaintiff understood his employment was at will, and plaintiff's "feeling that termination was unjust is not enough to establish a breach of an implied employment contract." Dkt. 26 at 4.

Plaintiff does not dispute the Court's findings. Rather he seeks review arguing "in appealing this motion, I am prepared to explain and to demonstrate beyond any belief that that

1 there was indeed an implied contract between myself and my former employer which they broke
2 when they illegally terminated my employment.” Dkt. 29. Plaintiff’s promise to demonstrate—
3 ostensibly through the presentation of additional evidence—that there was an implied contract
4 undermines his request to proceed in forma pauperis on appeal. This is because a future promise
5 to present evidence does not establish the Court erred in granting summary judgment. Moreover,
6 the fact plaintiff promises to present additional evidence reinforces the finding that the Court
7 properly determined there was no implied contract, outside of plaintiff’s subjective feelings that
8 such a contract existed.

9 Because plaintiff has presented nothing showing there is any basis to conclude the Court
10 erred in granting summary judgment and dismissing the case, the Court recommends plaintiff’s
11 motion to proceed in forma pauperis on appeal be **DENIED** and further recommends plaintiff be
12 given notice that the court certifies the appeal is not taken in good faith. *See* Federal Rule of
13 Appellate Procedure 24(4)(B).

14 The Court also notes plaintiff’s in forma pauperis affidavit is deficient in that plaintiff
15 failed to submit “an affidavit that: (A) shows in the detail prescribed by Form 4 of the Appendix
16 of Forms the party’s inability to pay or give security for fees and costs.” Rule 24 (a)(1). The
17 Clerk should provide plaintiff a blank copy of Form 4 of the Appendix of Forms to the Rules of
18 Appellate Procedure, along with a copy of this Report and Recommendation.

19 If the Court adopts this recommendation, plaintiff is advised he may file a motion to
20 proceed in forma pauperis in the court of appeals within 30 days after service of the notice of the
21 denial of his in forma pauperis motion. The motion to the court of appeals must include a copy
22 of the affidavit described above, if plaintiff submitted one, and the district court’s statement of
23 reasons for the district court’s action. Plaintiff may also submit with a motion in the court of

1 appeals an in forma pauperis affidavit prescribed by Rule 24(a)(1).

2 Any objections to this Recommendation must be filed no later than **May 8, 2013**. The
3 Clerk should note the matter for **May 10, 2013**, as ready for the District Judge's consideration.
4 Objections shall not exceed ten pages. The failure to timely object may affect the right to appeal.

5 DATED this 24th day of April, 2013.

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BRIAN A. TSUCHIDA
United States Magistrate Judge
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